

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CENTRAL DIVISION

CIVIL ACTION NO.4:11-cv-40180-TSH

JAMES P. Vander SALM and
JESSICA T. Vander SALM, as Trustees
of the Judith P. Vander Salm Irrevocable Trust,
and JUDITH P. Vander SALM,

Plaintiffs,

v.

BAILIN & ASSOCIATES, INC.,
the SALISBURY HILL CONDOMINIUM
TRUST, PETER T. KARASSIK, individually,
JOHN L. MACKOUL, individually,
THOMPSON-LISTON ASSOCIATES, INC.,
PATRICK J. HEALY, individually,
ROTTI CONSTRUCTION COMPANY, INC.,
WALTER R. ROTTI, individually,
ECOTEC, INC.,
and PAUL J. MCMANUS, individually,

Defendants.

**DEFENDANT, SALISBURY HILL CONDOMINIUM TRUST'S
OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE EVIDENCE
OF TAX-ASSESSED VALUE OF VANDER SALM PROPERTY**

Now comes the Defendant, Salisbury Hill Condominium Trust (Salisbury Hill), and respectfully requests this Honorable Court enter an Order *in limine* denying Plaintiffs' Motion to Preclude Evidence of Tax-Assessed Value of Vander Salm Property. As grounds for said opposition, Salisbury Hill states:

1. Evidence of the tax-assessed value of the Vander Salm property is relevant and necessary for the jury to properly assess damages. The Plaintiffs are seeking *hundreds of thousands of dollars* in monetary damages ostensibly to restore a pond that is only partially located on their

land. Even if the Plaintiffs can establish that an unlawful activity of the Defendants was the proximate cause to the algae and weeds growing in the pond, Defendants have the right to demonstrate that the monetary damages sought by Plaintiff far exceeds the value of the entire property as assessed by the City of Worcester, whose records are public and which assessment was not appealed by the Plaintiffs. The assessed value of the property is evidence of value. Under applicable law diminution in property value is a viable measure of damages which may operate to cap the monetary damage that Plaintiff is may be entitled to, particularly where the restoration sought far exceeds the value of the property it is restoring.

2. The evidence of assessed value is public record. The jury is entitled to assign whatever probative weight it determines that the assessed value bears on the amount of monetary damages that Plaintiffs are awarded, if any.

The Defendants, Ecotec, Inc. and Paul J. McManus join in this opposition.

WHEREFORE, the Defendant, Salisbury Hill Condominium Trust, respectfully requests this Court to enter an Order, denying Plaintiff's motion.

Dated: June 16, 2014

Respectfully submitted,

Defendant,
Salisbury Hill Condominium Trust,
By its attorney,

/s/Angelo P. Catanzaro

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Joined by,
Defendants,
ECOTEC, INC., and
PAUL J. MCMANUS,
By their Attorney,

/s/ Wesley J. Marshall

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2014, I filed a copy of this document with the Court's ECF system, which will cause an electronic notice of such filing to be sent to counsel for each party in the case.

/s/ Angelo P. Catanzaro

Angelo P. Catanzaro